



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDRES GONZALES,

Plaintiff,

v.

11 Civ. 3021 (DAB)
ADOPTION OF REPORT
AND RECOMMENDATION

TIANO'S CONSTRUCTION CORP., et al.,

Defendants.

-----X
DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the February 6, 2013 Report and Recommendation of United States Magistrate Judge Henry Pitman (the "Report"). Judge Pitman construed the Motion to Dismiss of Defendants Tiano's Construction Corp. and Mitrani Plasterers Co. Inc. as a Motion for Summary Judgment, giving appropriate notice to all Parties. (Report at 1-2.) Judge Pitman's Report recommends that summary judgment be granted in favor of these two Defendants. (Report at 2, 8.)

"Within fourteen days after being served with a copy [of a magistrate judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The Court may adopt those portions of the Report to which no timely objection has been made, as long as there is no clear error on the face of the record. DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009). "[F]ailure to

object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision."

Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008)

(quoting Small v. Sec'y of Health & Hum. Servs., 892 F.2d 15, 16 (2d Cir. 1989)). This rule applies to pro se parties so long as the magistrate's report "explicitly states that failure to object to the report within [fourteen (14)] days will preclude appellate review" Small, 892 F.2d at 16.

Despite being advised of the procedure for filing objections in Judge Pitman's Report, and warned that failure to file objections would waive objections and preclude appellate review, (Report at 8-9), Plaintiff has filed no objections to the Report. Nor has any other Party filed objections to the Report.

Having reviewed the Report, and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED AND ADJUDGED that the Report and Recommendation of United States Magistrate Judge Henry Pitman, dated February 6, 2013, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety. The Motion for Summary Judgment of Defendants Tiano's Construction Corp. and Mitrani Plasterers Co. Inc. is hereby GRANTED and this action is DISMISSED as against these Defendants.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose

of an appeal. See Coppedge v. United States, 369 U.S. 438,
444-45 (1962).

SO ORDERED.

Dated: New York, New York

March 18, 2013

Deborah A. Batts

Deborah A. Batts
United States District Judge